

Introduced by Senator Florez

February 7, 2007

An act to add Chapter 12 (commencing with Section 113365) to Part 6 of Division 104 of the Health and Safety Code, relating to food safety.

LEGISLATIVE COUNSEL'S DIGEST

SB 200, as introduced, Florez. Food safety: produce inspector: leafy green vegetable licensing.

Existing law, the Sherman Food, Drug, and Cosmetic Law, contains various provisions regarding the packaging, labeling, and advertising of food, drugs, and cosmetics. The State Department of Health Services administrators and enforces this act. Effective July 1, 2007, these duties will be transferred to the State Department of Public Health.

This bill would authorize the department to adopt recall, quarantine, and sanitary regulations necessary to prevent, circumscribe, or eliminate any condition where any produce or food processed from produce may carry an illness, infection, pathogen, contagion, toxin, or condition that, without intervention, could transmit an illness that could kill or seriously affect the health of humans, as specified.

The bill would also prohibit any person from growing leafy green vegetables for resale without a license issued by the department and would authorize the department to require payment of a license fee.

The bill would also require the director to establish and administer a leafy green vegetable inspection program, as specified. This bill would authorize the imposition or assessment of civil penalties for negligent or intentional violation of any state law or regulation by importing any produce that causes infestation or infection, as specified. These funds are to be deposited in the State Department of Public Health Inspection Fund which would be created by the bill the moneys in which would

be used, upon appropriation of the Legislature, for the inspection program provided for in the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 12 (commencing with Section 113365)
2 is added to Part 6 of Division 104 of the Health and Safety Code,
3 to read:

4
5 CHAPTER 12. PRODUCE INSPECTION PROGRAM

6
7 Article 1. Definitions

8
9 113365. For purposes of this chapter, the following definitions
10 shall apply:

11 (a) "Director" means the State Public Health Officer.

12 (b) "Leafy green vegetables" means vegetable produce with
13 edible green or reddish leaves and includes, but is not limited to,
14 baby leaf lettuce or immature lettuce or leafy greens, butter lettuce,
15 endive, escarole, green leaf lettuce, iceberg lettuce, red leaf lettuce,
16 romaine lettuce, spring mix, and spinach.

17 (c) "Produce" means any food in its raw or natural state which
18 is in a form as to indicate that it is intended for consumer use with
19 or without any further processing.

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21 Article 2. Produce Safety

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23 113365.2. (a) The State Public Health Officer may adopt recall,
24 quarantine, and sanitary regulations necessary to prevent,
25 circumscribe, or eliminate any condition described in subdivision
26 (b).

27 (b) Subject to the rights and procedures established pursuant to
28 Chapter 4.5 (commencing with Section 11400) of Division 3 of
29 Title 2 of the Government Code, and in accordance with regulations
30 adopted pursuant to this code, the director shall recall or impose
31 a quarantine or do both if he or she believes, upon any basis
32 reasonably supportable by standard epidemiological practice or
33 credible scientific research, that any produce or food processed

1 from produce may carry an illness, infection, pathogen, contagion,
2 toxin, or condition that, without intervention, could transmit an
3 illness that could kill or seriously affect the health of humans,
4 including, in addition to the original condition, those clinically
5 plausible secondary illnesses, infections, pathogens, contagions,
6 toxins, or conditions arising from the effects of the original.

7 (c) (1) Because the authority conferred by this section is
8 designed to protect the health and safety of the citizens of this
9 state, the authority shall be interpreted broadly to give full effect
10 to the purpose of protecting the public health and safety and shall
11 be construed to include recalls and the imposition of quarantines
12 in the circumstances of natural disaster, whether occurring or
13 imminent, or declared emergencies.

14 (2) In furtherance of the objectives of the recall or quarantine,
15 the director may impose restrictions not only on the affected
16 produce itself and the uses to which this produce may be put, but
17 on products produced from, by, or with this produce in order to
18 minimize the risk or spread of food-borne illness.

19 (3) The director's quarantine powers set forth in this section
20 expressly include the power to order movement, segregation,
21 isolation, or destruction of produce or food products, as well as
22 the power to hold produce or food products in place.

23 113365.3. It is unlawful for any person to move or allow to be
24 moved any produce, food processed from produce, vehicles, farm
25 equipment, farm products, or other materials that are subject to
26 restrictions established pursuant to Section 113365.2 unless that
27 person has first obtained authorization from the director.

28 113365.4. If it is necessary to restrict the movements of produce
29 pursuant to Section 113365.2, the director may fix and proclaim
30 the boundaries of a quarantine area in lieu of separate, individual
31 orders issued to each owner pursuant to Section 113365.2. While
32 the boundaries are in force, it is unlawful for any person to move
33 or allow to be moved any such produce from or within the
34 boundaries of the quarantine area, unless that person is authorized
35 to do so by the director.

36 113365.5. In addition to actions that may be directed by the
37 director pursuant to Section 113365.2, the director may do any or
38 all of the following:

39 (a) Regulate, restrict, or restrain the movements of persons,
40 vehicles, farm equipment, farm and dairy products, and other

1 property from or into the quarantine area, or from place to place
2 within it, during the existence of the quarantine.

3 (b) Impose, as a condition to travel through or within the
4 quarantine area, that no person or vehicle which is permitted to
5 travel on any road or highway shall depart from the road or
6 highway while within the quarantine area.

7 (c) Order all produce within the quarantine area to be detained
8 for purposes of examination or inspection at any place which is
9 specified in the order.

10 (d) Cause to be destroyed all produce or property that may be
11 found within the area that is affected with the disease, infestation,
12 or condition or that have been so exposed as to be dangerous to
13 animals or humans.

14 (e) Require a proper disposal of any produce that is destroyed.

15 (f) Adopt and enforce all necessary regulations for cleaning and
16 disinfecting any premises or property where the disease, infestation,
17 or condition exists or has existed by treatment, disposal, or
18 otherwise, and such other regulations as he or she may deem
19 necessary to eradicate the disease and to prevent its dissemination.

20 113365.6. If the director invokes Section 113365.2, and the
21 importation of produce, food products, or other property from any
22 state, territory, or foreign country may transmit, carry or
23 disseminate the illness, infection, pathogen, contagion, toxin, or
24 condition designated pursuant to Section 113365.2, the director
25 shall prescribe the conditions, if any, under which this produce,
26 food product, or property may be imported into this state.

27 113365.7. This article shall not be construed to affect the
28 authority of a local health officer to impose a quarantine, except
29 that a quarantine shall not be established by one county or city
30 against another county or city on account of the existence of any
31 disease or condition subject to the authority of the director pursuant
32 to Section 113365.2.

33 113365.8. (a) Any person who negligently or intentionally
34 violates any state law or regulation, including any quarantine
35 regulation, by importing any produce or other article, which by
36 virtue of being pest infested or disease infected, causes an
37 infestation or infection of a pest, animal, or disease, or causes an
38 existing infestation to spread beyond any quarantine boundaries
39 is liable civilly in a sum not to exceed twenty-five thousand dollars

1 (\$25,000) for each act that constitutes a violation of the law or
2 regulation.

3 (b) The Attorney General, upon request of the director, shall
4 petition the superior court to impose, assess, and recover the sum
5 imposed pursuant to subdivision (a). In determining the amount
6 to be imposed, the court shall take into consideration all relevant
7 circumstances, including, but not limited to, the extent of harm
8 caused by the violation and the nature and persistence of the
9 violation.

10 (c) The remedy under this section is in addition to, and does not
11 supersede or limit, any and all other remedies, civil or criminal,
12 that are otherwise available to the state.

13 (d) Any funds recovered pursuant to this section shall be
14 deposited in the State Department of Public Health Produce
15 Inspection Fund, which is hereby created within the State Treasury.
16 Notwithstanding Section 16305.7 of the Government Code, any
17 interest earned on money deposited in the fund shall also accrue
18 to the fund. Money in the fund, upon appropriation by the
19 Legislature, shall be available for emergency pest or disease
20 exclusion, detection, eradication, and research of agricultural plant
21 or animal pests or diseases, and may also be expended to cover
22 costs related to the enforcement of this chapter.

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24 Article 3. Compensable Destruction of Diseased Produce
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26 113365.9. Except as otherwise provided in Section 113365.12,
27 if any produce or property is destroyed pursuant to Section
28 113365.5, the owner of the produce or property shall be paid an
29 amount of money as provided in Section 113365.11.

30 113365.10. The state may contribute toward the payment for
31 the produce or property destroyed if either of the following occurs:

32 (a) The United States agrees to share equally in the payment.

33 (b) The director finds that the failure to dispose of the produce,
34 food product from the produce, or property would be or would
35 have been detrimental to human or animal health or the welfare
36 of the produce industry.

37 113365.11. (a) The value of the produce or property prior to
38 its destruction for which contribution is made pursuant to
39 subdivision (a) of Section 113365.10 shall be determined by an
40 appraisal process agreed upon by the Secretary of the Department

1 of Food and Agriculture and the Secretary of the United States
2 Department of Agriculture.

3 (b) The value of the produce or property prior to its destruction
4 for which contribution is made pursuant to Section 113365.10 shall
5 be expeditiously determined by the secretary in consultation with
6 the affected industry.

7 (c) This section shall not be construed to require appraisal or
8 payment before destruction is carried out.

9 113365.12. Indemnity payments provided by this chapter shall
10 not be paid for any produce or property which is taken, destroyed,
11 or otherwise disposed of pursuant to any provision of this chapter
12 that relates to the control, prevention, or eradication of disease, if
13 the owner is in violation of any quarantine order issued pursuant
14 to this chapter or any regulation adopted pursuant thereto.

15 Article 4. Unlawful Acts

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18 113365.13. It is unlawful for any person to bring or cause to
19 be brought any produce into a quarantined district, area, or
20 premises, without written permission from the director or an
21 authorized representative.

22 113365.14. It is unlawful for any person to resist the destruction
23 of any produce or property ordered destroyed by the director
24 pursuant to Section 113365.2.

25 113365.15. It is unlawful for any person to hide, secrete, or
26 fail to disclose any produce or property that has been exposed or
27 potentially exposed to any disease subject to a current quarantine
28 order or to fail to disclose the whereabouts of that produce or
29 property.

30 113365.16. It is unlawful for any person to fail or refuse to
31 dispose of any produce or property destroyed pursuant to Section
32 113365.2 in the manner prescribed by the director, when directed
33 or required to do so.

34 113365.17. It is unlawful for any person to fail or refuse to
35 clean or disinfect any premises in the manner prescribed by the
36 director, when directed to do so by the director pursuant to Section
37 113365.2.

Article 5. Leafy Green Licensure Program

113366. No person may grow leafy green vegetables in the state for resale without a license issued by the State Department of Public Health pursuant to this article.

113366.1. (a) The department shall issue an annual license, that is nontransferable, to any person who meets the requirements of this article.

(b) The department may require payment of a license fee for the permit that is based upon the costs to the department to administer this article and Article 6 (commencing with Section 113367), as adjusted for the amount of leafy green vegetables expected to be grown by the applicant.

113366.3. No leafy green vegetables subject to the inspection required by this chapter shall be shipped by the licensee who grew it until the licensee has paid any required license fee pursuant to this article.

Article 6. Leafy Green Vegetable Inspection Program

113367. The director shall establish and administer a leafy green vegetable inspection program to ensure the safety of leafy green vegetables in the state to the public.

113367.1. The director shall appoint inspectors to conduct inspections of the fields on which leafy green vegetables are grown in order to do both of the following:

(a) Verify that the grower of the leafy green vegetables is in compliance with all food safety requirements established pursuant to state law and regulations.

(b) Conduct independent water, soil, and produce tests in, and in the area of, the fields.